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May 6, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Gloria Molina
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Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

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WASHINGTON, D.C. UPDATE ON SENATE IMMIGRATION REFORM LEGISLATION

Executive Summary

This memorandum is to provide the Board with an update on bipartisan "Gang of Eight" immigration reform legislation (S. 744), which is scheduled to be marked up in the Senate Judiciary Committee beginning on May 9, 2013.

- The bill's major elements include a path to citizenship for undocumented immigrants, strengthened border security and other immigration enforcement measures, and legal immigration reforms that increase the number of legal immigrants, including temporary workers, admitted into the United States.
- The bill's path to citizenship and legal immigration reforms would significantly increase the number of legal immigrants in Los Angeles County who would be ineligible for Federal means-tested benefits, such as full-scope Medicaid services, but become eligible for State-mandated and County-funded General Relief and health services that are available to all indigent legal residents.
- Under the bill, the vast majority of undocumented immigrants granted legal status in the County would be ineligible for Federal means-tested benefits for at least 15 years and for the Affordable Care Act's health exchange subsidies for at least 10 years, shifting the cost of aiding them to the County.

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Major Elements of S. 744, Bipartisan Senate Immigration Reform Legislation

On April 16, 2013, S. 744 (Schumer, D-NY), the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, was introduced. This is the long-awaited 844-page comprehensive immigration reform bill, drafted by the bipartisan “Gang of Eight” Senators. On May 1, 2013, the Senate Judiciary Committee posted a 350-page sponsor’s amendment to the bill, which will be considered during the Committee’s mark-up of the bill, which is scheduled to begin on May 9, 2013. This amendment would not significantly change the major elements of the bill. Most of its changes consist of technical corrections, clarifying language, and application fee increases for non-immigrant visas to help finance the cost of implementing the bill.

Major elements of S. 744 include:

- **Border Security:** Requires the Department of Homeland Security (DHS) to develop and implement a Comprehensive Border Security Strategy and Southern Border Fencing Strategy, and establishes a trust fund to help implement these strategies;
- **Interior Enforcement:** Requires all employers to use the automated employment verification system (“E-Verify”) within five years. Implements a photo identification component to E-Verify, and also includes immigration court improvements and detention reforms;
- **Path to Citizenship/Legalization:** Provides a path to citizenship for undocumented immigrants currently in the United States who meet certain requirements, such as passing criminal background checks, paying back taxes, fines, and application fees, with a simpler and faster path for childhood arrivals (“DREAMers”), and undocumented farm workers;
- **Legal Immigration Reforms:** Makes numerous reforms of the current legal immigration system, including changes to the current family-based and economic-based systems, the creation of a new merit-based system and new non-immigrant visa for certain families who are waiting for green cards, and measures aimed at reducing current legal immigration backlogs; and
- **Non-Immigrant (Temporary) Visa Reforms:** Reforms and expands the H-1B non-immigrant visa program for highly skilled foreign workers, creates a new “W” non-immigrant visa for lesser-skilled foreign workers, creates a new agricultural guest worker program, and a new “INVEST” visa for qualifying foreign entrepreneurs.

Of County interest, S. 744 extends the authorization of appropriations for the State Criminal Alien Assistance Program (SCAAP) through Federal Fiscal Year (FFY) 2015 at its authorization level of \$950 million in FFY 2011 when its authorization expired. The authorization level sets the maximum amount of funds that can be appropriated for a program. SCAAP always has been funded below its authorization level. In fact, while SCAAP's authorization level rose from \$850 million in FFY 2007 to \$950 million in FFYs 2008 through 2011, its annual appropriations dropped each year from \$410 million in FFY 2008 to \$240 million in FFY 2012.

Path to Citizenship for Undocumented Immigrants

The bill's provision which would most significantly affect the County is its path to citizenship for undocumented immigrants who currently are in the U.S.

Under S. 744, eligibility for legalization would be limited to undocumented immigrants who have been in the U.S. since before 2012, have not been convicted of a felony or three misdemeanors, and pay penalty fines, any tax liabilities, and application fees. The legalization application period would begin on the date on which the final rule governing legalization is published in the Federal Register. The application period will last for one year, but may be extended for an additional 18 months by the Secretary of Homeland Security ("DHS Secretary").

Qualifying legalization applicants initially would be granted Registered Provisional Immigrant (RPI) status, which would last six years, and which can be renewed every six years. Under current law, all lawfully present individuals, which would include anyone granted RPI status, are eligible for Affordable Care Act (ACA) health exchange subsidies. The bill, however, amends the ACA to bar RPIs from receiving such subsidies. The sponsor's amendment to the bill also amends the ACA to clarify that RPIs would be exempt from individual mandate penalties for lacking health insurance.

After 10 years of RPI status, the bill would allow RPIs to apply for lawful permanent resident (LPR) status and to apply for citizenship after 3 years of LPR status. Current law, which bars LPRs from receiving most Federal means-tested benefits (including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), and full-scope Medicaid benefits) for five years, also would apply to RPIs and their subsequent first 5 years of LPR status.

The bill's path to citizenship would be costly for applicants. Required fines would total \$2,000 - an initial \$500 fine to apply for RPI status, another \$500 fine to renew RPI status, and a \$1,000 fine to apply for LPR status. Separate application processing fees

also must be paid - one to apply for RPI status and others to apply for the renewal of RPI status, LPR status, and naturalization. The bill does not specify the dollar amount of the application fees, but the fees are supposed to offset the entire cost of processing and adjudicating applications. The current application fee, including the \$85 biometric fee for criminal background checks, is \$1,070 to apply for LPR status and \$680 to apply for naturalization.

The bill also includes stringent employment requirements for the renewal of RPI status after six years and adjustment to LPR status after 10 years. To renew RPI status, an RPI must either: (1) have been regularly employed without any gap of over 60 days and is not likely to become a public charge; or (2) show an average income over 100% of the Federal poverty level (FPL) throughout the period of RPI status. The employment requirement for LPR status is similar except for a higher 125% FPL threshold. The DHS Secretary may waive the employment requirements if an RPI can demonstrate extreme hardship to himself/herself or to an immediate family member who is a U.S. citizen. There also is an exemption from the employment requirement during periods of full-time attendance in certain educational institutions. The English and civics test for naturalization also will be required for RPIs to obtain LPR status.

The path to citizenship would be faster for DREAMers - undocumented immigrants who entered the U.S. before age 16, graduated from high school, and meet certain higher education or military service requirements. They would be allowed to adjust to LPR status after 5 years of RPI status and to apply for naturalization after receiving LPR status without the normal 5-year waiting period. The DHS Secretary also is allowed to apply streamlined procedures to their adjustment to LPR status.

The path to citizenship also would be faster for undocumented farm workers who worked for at least 575 hours or 100 days during 2011 and 2012. They would be granted a "blue card" (not RPI status) and could apply for LPR status after 5 years if they met certain farm work requirements. Similar to RPIs, blue card holders would be ineligible for ACA exchange subsidies and also be subject to the 5-year bar on Federal means-tested benefits after they receive LPR status.

Potential Impacts of the Senate Immigration Reform Bill

The impacts of any immigration reform legislation cannot be predicted with any degree of certainty, and will be significantly affected by how the Federal government interprets, enforces, and administers immigration laws, which is likely to change over time. It is noteworthy that some of the biggest impacts of the two most recently enacted immigration reform laws were unanticipated. Since the Immigration and Nationality Act of 1965 was enacted, immigration from Asia grew far more than expected, and illegal

immigration also grew far more than expected after the enactment of the Immigration Reform and Control Act of 1986, which established employer sanctions against the hiring of undocumented workers and included other measures aimed at curbing illegal immigration.

With these caveats in mind, the bill's provisions which would affect the County the most are its path to citizenship for undocumented immigrants and legal immigration reforms which would significantly increase the number of legal immigrants in the County who initially would be ineligible for Federal means-tested benefits, such as full-scope Medicaid benefits, but would become eligible for General Relief and health services that counties are mandated to provide all indigent legal residents under Section 17000 of the State Welfare and Institutions Code.

The County has over 3.5 million foreign-born residents of whom an estimated 1.1 million are in the country illegally (or roughly one-tenth of all undocumented immigrants who would be eligible for legalization in the U.S.). In the past decade, legal immigration into the County averaged over 80,000 a year. That number would increase significantly if the bill were enacted, especially due to its provisions which seek to eliminate the current long backlogs of relatives of U.S. citizens and lawful permanent residents (LPRs) who are waiting to be admitted into the country. The longest backlogs are from countries, such as Mexico, Philippines, China, Korea, and India, which also are the countries of origin for most of the County's large naturalized citizen and LPR populations.

Under current law, all non-citizens are ineligible for most Federal means-tested benefits, such as TANF, SNAP, SSI, and full-scope Medicaid benefits, for their first five years of LPR status. However, all legal non-citizens, including those with non-immigrant (temporary) visas, are eligible for ACA health exchange subsidies without a 5-year waiting period. Such subsidies also are available to all legal non-citizens who would have qualified for Medicaid if it were not for the 5-year bar. The Senate bill, however, amends the ACA to make undocumented immigrants who are granted Registered Provisional Immigrant (RPI) status ineligible for ACA subsidies. While RPIs would become eligible for such subsidies after they become LPRs, but would remain ineligible for most other Federal means-tested benefits during their first five years of LPR status.

In practical terms, the period of ineligibility for ACA subsidies could be significantly longer than 10 years for many, if not most legalized individuals, and their waiting period for means-tested benefits, such as full-scope Medicaid benefits, could be significantly longer than 15 years. This is because, while S. 744 allows RPIs to apply for LPR status after 10 years of RPI status, many, if not most, will not apply for LPR status soon after they become eligible, and it also will take time for their criminal background checks to be cleared and for their LPR applications to be adjudicated. The application processing

backlogs especially could be long when so many individuals are likely to be applying around the same time.

The bill also includes legalization application requirements that could lower participation rates or delay the submission of applications. For example, the combined total of \$2,000 in fines and potentially an even greater amount of application fees will be a financial barrier for many to become LPRs. Many RPIs also may delay applying for LPR status until they see how DHS strictly applies the bill's new requirement of regular employment without a gap over 60 days or an income over 125% of the federal poverty level during the entire 10-year period of RPI status. Unless the DHS Secretary routinely waives this requirement for extreme hardship, many RPIs are unlikely to meet this employment/income requirement. This is one example of how the federal government implements the new law will significantly affect its ultimate impacts.

The ineligibility of newly legalized individuals for both ACA health subsidies for at least 10 years and for full-scope Medicaid benefits for at least 15 years is likely to have the greatest impact on County-funded services. This is because the County's undocumented population is far less likely to be insured than other County residents. Based on the results of the 2009 California Health Interview Survey (CHIS), which surveyed 9,608 households in the County, up to 446,000 former undocumented immigrants in the County would remain uninsured despite becoming legal immigrants due to the bill's restrictions on their eligibility for Federal-funded health benefits. Under State law, the County is responsible for health services provided to indigent County residents who are ineligible for Federal Medicaid benefits.

The County also could incur increased costs for General Relief provided to newly legalized individuals who are denied SSI and TANF benefits. Based on the County's prior experience with the legalization program under the Immigration Reform and Control Act (IRCA) of 1986, those costs would be relatively small, compared to health services. Under IRCA's legalization program, newly legalized aliens were denied eligibility for most Federal means-tested benefits for five years, and \$4 billion was appropriated for a State Legalization Impact Assistance Grant (SLIAG), which reimbursed state and local costs, of public health, public assistance (including medical care and mental health services), and educational services provided to legalized aliens during their 5-year period of ineligibility for most Federal benefits. Reimbursement for public health and public assistance costs was limited to costs of services for which legalized aliens were eligible under pre-existing state or local programs. The County, which alone accounted for 720,000 of the 2.7 million undocumented immigrants who were granted legal status, received over \$800 million in SLIAG reimbursement, nearly all of which were for indigent health services, mental health, and public health.

Each Supervisor
May 6, 2013
Page 7

It is noteworthy that, unlike IRCA, S. 744 does not create a similar impact assistance fund to reimburse state and local costs of assisting newly legalized individuals while they are denied Federal means-tested benefits even though a far greater number of legalized individuals would be denied such benefits for far longer than five years. This cost shift from the Federal government to state and local governments would be especially unfair because newly legalized individuals would be paying taxes, fines, and fees to the Federal government, but state and local governments, such as the County, would have bear most of the cost of services provided to them. In California, it is county government which would have to bear the lion's share of health and public assistance costs.

Numerous studies have estimated that most of the taxes paid by immigrants, including undocumented immigrants, go to the Federal government in the form of Social Security and Medicare payroll taxes. This is because immigrants have very high labor force participation rates relative to the rest of the population, and payroll taxes are collected from all workers, including undocumented workers. The large amount of fines and fees that legalization applicants would be required to pay also would reduce their disposal incomes, which indirectly would reduce state and local sales tax revenues.

We will continue to keep you advised.

WTF:RA
MR:MT:ma

c: Executive Office, Board of Supervisor
County Counsel